

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Policies Concerning	)	MB Docket No. 04-256
Attribution of Joint Sales Agreements	)	
In Local Television Markets	)	

TO: Office of the Secretary  
ATTN: The Commission

**REPLY OF KTBS, INC.**

KTBS, Inc. ("KTBS"), through counsel, hereby replies to comments filed in response to the Commission's Notice of Proposed Rule Making issued on August 2, 2004 (the "JSA NPRM") in the above-referenced proceeding.

**I.     Introduction**

Not a single comment<sup>1</sup> supports the Commission's proposal to attribute television ownership interests by virtue of a Joint Sales Agreement (JSA). Commenters agree that the evidence does not support the Commission's proposal to impose a television JSA attribution regime equivalent to the attribution requirement already imposed on radio stations. The marketplace dynamics of radio and television are so vastly different that a single regulatory scheme is not appropriate to both media. Without evidence, the Commission cannot justify a television JSA attribution rule by making a "rational

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<sup>1</sup> Among those comments in this proceeding that were made available for public inspection on the Commission's Internet-based Electronic Comment Filing System.

connection between the facts found and the choice made,”<sup>2</sup> as required under the Administrative Procedure Act.

## **II. Discussion**

Television JSAs support the clear public interest in diversity and competition in free over-the-air television by making lower-rated broadcast television stations better competitors in a multichannel marketplace. Commenters note that JSAs help achieve this public interest goal by freeing resources for programming that might otherwise be diverted to commercial sales and promotion. The additional revenues JSAs bring to struggling TV stations can then be used to improve programming, which, in turn, can increase a struggling station’s audience and revenues.

If the Commission adopted a JSA attribution rule, it would essentially eliminate an important tool and remove a lifeline from struggling stations in the majority of television markets. As KTBS noted in its comments, multiple ownership is prohibited under current rules in a majority of television markets. *See KTBS Comments* at 14.

Given these far-reaching implications, the Commission should not impose such a *per se* prohibition on JSAs in so many markets until it has completed its efforts to comply with the court’s mandate in *Prometheus Radio Project v. F.C.C.*,<sup>3</sup> and both determines and adequately justifies the parameters of television multiple ownership restrictions. *See KTBS Comments* at 3. Should the Commission conclude at such a future time that JSA attribution, either conditioned or otherwise, is warranted as part of the comprehensive restructuring of television multiple ownership parameters contemplated by *Prometheus Radio Project*, then it must only impose a rule that is reasonable, enforceable and does

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<sup>2</sup> *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (citing *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962)).

<sup>3</sup> 373 F.3d 372 (3d Cir. 2004).

not harm the important public interest in diversity and competition in free over-the-air television.

While commenters universally opposed the FCC's JSA attribution proposal, some suggested possible alternative regulatory regimes should the Commission decide that a JSA attribution rule is appropriate – notwithstanding the opposition by commenters.

For example, KTBS opposes an alternative submitted by Paxson Communications Corporation (“Paxson”) that would “[a]ttribute only those television JSAs where the sales agent would be selling more than 35% of all broadcast television advertising time in its DMA.” *Comments of Paxson Communications Corporation* at 15. The Paxson regulatory scheme would harm diversity and competition in free over-the-air television rather than improve it by making it virtually impossible for struggling, lower-rated stations in many of the country's smaller markets to benefit at all from JSAs. These are precisely the stations that stand to benefit most from a JSA.<sup>4</sup>

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<sup>4</sup> Under Paxson's proposal, in a market with six commercial stations, such as KTBS's Shreveport, Louisiana DMA, two stations could theoretically combine their advertising sales efforts through a JSA if all stations broadcast the same average number of commercial minutes each day. In such a scenario, the JSA sales agent would only be selling 1/3 of the market's commercial time – just shy of Paxson's proposed 35 percent threshold. But should one station in the market, but not in a particular JSA, make a business decision to either limit its commercial minutes or, alternatively, should one of the two stations in a particular JSA run extra commercials to raise additional revenue, the total percentage of advertising time under a JSA could easily surpass 35 percent – given the small difference between compliance at 33.33 percent (when all market stations run about the same number of commercial minutes) and non-compliance at 35 percent (should stations differ in the amount of time allocated to advertising spots). Moreover, measuring compliance would be exceedingly difficult. It would require ascertaining the precise amount of each station's available commercial inventory, a determination as whether public service announcements and promotional spots are included in the inventory count and myriad other regulatory difficulties. Above all, the net effect in many, if not most, of these small and medium sized markets will be harm to the lowest-rated competitors as they would be unable to enter into a JSA that would otherwise improve the station's competitive position and, thereby, improve diversity in the market.

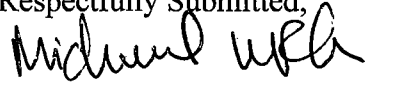
Commenters note that any abuses threatening diversity and competition in free over-the-air television that involve any particular party to a JSA can be regulated through existing means – as the Commission did so successfully in *Shareholders of Ackerley Group, Inc.*, 17 FCC Rcd 10828 (2002) (“*Ackerley*”) (holding that particular terms of a local marketing agreement, in combination with a JSA, gave the licensee no incentive to exercise control over programming.) True JSAs – those that improve revenues and support better programming (which, in turn, help improve viewership and further increase revenue) – are important tools. The Commission must not make weaker stations weaker still by making these tools less available or, in many cases, completely unavailable.

### **III. Conclusion**

The record demonstrates that local television JSA attribution would harm the public interest in diversity and competition in free over-the-air broadcasting without countervailing or attendant benefit. Halfway measures, such as Paxson’s alternative, would not solve this problem in small and medium sized markets in which lower-rated stations are most in need of the competitive boost that JSAs provide. As JSAs provide a vital tool assisting lower-rated stations compete, survive, and provide diverse voices in an increasingly competitive multichannel universe, the Commission must not make them unavailable to large numbers of struggling stations – lest it make the free over-the-air

broadcast television less competitive and less diverse.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael W. Richards", written over a horizontal line.

James P. Riley

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